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CENTRAL FAX CENTER

APR 20 2009

PTO/SB/84 (03-09)

Approved for use through 04/30/2009. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)</b>		<b>Docket Number (Optional)</b> <b>3601-PAT</b>
First named inventor: Nishibori		
Application No.: 10/569,300		Art Unit: 1791
Filed: 2/23/2006		Examiner: Butler, Patrick Neal
Title: Cushion Material Composed of a Resin Molded Article Having a Spring Structure and a Method of Producing the Same and Dies Used in the Manufacture of the Cushion Material		
Attention: Office of Petitions Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450 FAX (571) 273-8300		
NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.		
The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.		
APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION		
NOTE: A grantable petition requires the following items: (1) Petition fee; (2) Reply and/or issue fee; (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and (4) Statement that the entire delay was unintentional.		
1. Petition fee <input checked="" type="checkbox"/> Small entity-fee \$ <u>810.00</u> (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27. <input type="checkbox"/> Other than small entity - fee \$ _____ (37 CFR 1.17(m))		
2. Reply and/or fee A. The reply and/or fee to the above-noted Office action in the form of <u>Office Action Response</u> (identify type of reply): <input type="checkbox"/> has been filed previously on _____ <input checked="" type="checkbox"/> is enclosed herewith. B. The issue fee and publication fee (if applicable) of \$ _____ <input type="checkbox"/> has been paid previously on _____ <input type="checkbox"/> is enclosed herewith.		

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

04/21/2009 HMARZ11 00000031 071338 10569300

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PAGE 1/20 \* RCVD AT 4/20/2009 6:03:58 PM [Eastern Daylight Time] \* SVR:USPTO-EFAX-6/38 \* DNIS:2738300 \* CSID:858 509 1677 \* DURATION (mm-ss):06-22

PTO/SB/64 (03-09)

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## 3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/83).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

  
Signature

April 20, 2009

Date

Donn K. Harms

Typed or printed name

38,911

Registration Number, if applicable

12702 Via Cortina, Suite 100

Address

(858)509-1400

Telephone Number

Del Mar, CA 92014

Address

Enclosures: ☐ Fee Payment☒ Reply☐ Terminal Disclaimer Form☒ Additional sheets containing statements establishing unintentional delay☐ Other: \_\_\_\_\_**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.☒ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

April 20, 2009

Date



Signature

Laura Friedrichsen

Typed or printed name of person signing certificate

(Page 2 of 2)

**RECEIVED  
CENTRAL FAX CENTER****APR 20 2009****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****In re Application of: Nishibori****EXAMINER: Butler, Patrick Neal****Serial Number 10/569,300****Group Art Unit: 1791****Filing Date: 2/23/2006****For: CUSHION MATERIAL COMPOSED OF A RESIN MOLDED ARTICLE HAVING A  
SPRING STRUCTURE AND A METHOD OF PRODUCING THE SAME AND DIES USED  
IN MANUFACTURE OF THE CUSHION MATERIAL**

Hon. Commissioner of Patents  
and Trademarks  
Washington, D.C. 20231

**Petition To Withdraw Holding of Abandonment  
Based on Evidence That a Reply Was Timely Mailed or Filed**

Per 37 CFR 1.8(b) and MPEP § 512, a certificate of mailing under 37 CFR 1.8, may be relied upon in a petition to withdraw the holding of abandonment.

As indicated in 37 CFR 1.8(b) (3) a statement that attests to the previous timely mailing or transmission of the correspondence must be provided based on a personal knowledge basis, or to the satisfaction of the Director of the USPTO.

Applicant attaches a statement by Attorney Donn Harms attesting to the fact the response was timely mailed with a certificate of mailing and postcard.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)  
(In the Alternative)**

Should the above Petition based on timely mailing Per 37 CFR 1.8(b) be unacceptable, Applicant requests the attached Petition for Revival of an Application Abandoned Unintentionally per 37 CFR 1.137(b) be entered, and authorizes the fee for same to be deducted from Attorney's deposit account.

**STATEMENT REGARDING MAILING Per 37 CFR 1.8(b)**

I, Donn Harms, am the attorney of record on U.S. Patent Application Serial Number **10/569,300**.

I personally drafted a response to the first office action of over the two days prior to November 20<sup>th</sup> 2008, (a true copy of which is attached).

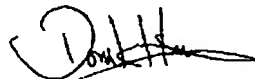
I remember this date and mailing because it was the same date upon which I received an electronic response from our client in Japan, which was immediately redrafted for submission to meet the PTO deadline.

This response, and two others were mailed on the same date by giving them to the mail carrier who was dropping the mail off at our office. I was on my way out to walk to the local postbox to place it in the mail box when I ran into the mail carrier in our parking lot, and gave him this and two other responses.

As is the normal course of office procedure, I personally placed a "Certificate of Mailing" on the top left corner of every response, attesting to the fact the response was placed in the mail on that date. I also placed a postcard with the response (copy attached) which apparently was never returned.

I declare further that all statements made herein are true and that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this document and the matter to which it relates.

Respectfully submitted,



Donn K. Harms  
Attorney for Applicant

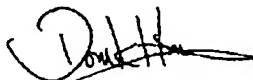
**REMARKS**

As noted in the telephonic conference with the Examiner, the PTO has apparently not received the response, or if received, it has not been entered into the system by the Contractor handling such incoming mail.

Applicant therefor requests that the attached amendment be entered, pursuant to **Per 37 CFR 1.8(b)**. Or, in the alternative, as a petition for revival of an application abandoned unintentionally pursuant to **37 CFR 1.137(b)**.

Should this request per rule 1.8 not be acceptable, or for any other reason, to examine or to maintain the active status of this application, please charge Deposit Account 07-1338 for any such fees.

Respectfully submitted,



Donn K. Harms  
Attorney for Applicant

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APR 20 2009

Patent: Cushion Material Composed of a Resin Molded  
Article Having a Spring Structure and a Method of  
Producing the Same...

Inventor Name: Nishibori

Serial No.: 10/569,300

Atty Docket No.: 3601-PAT

Received in the United States Patent Office on the date stamped  
hereon:

1. Transmittal Form (1 pg.);
2. Amendment/Reply (14 pgs);
3. Extension of Time;
4. Certificate of Mailing dated November 20, 2008;
5. Return Receipt Postcard.